



**THE ATTORNEY GENERAL
OF TEXAS**

March 21, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Ms. Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology Commission
1111 Rio Grande
Austin, Texas 78701

LO-89-27

Dear Ms. Alspaugh:

You inform us that students of cosmetology sometimes transfer completed hours of instruction earned at one cosmetology school or program to another school without having paid tuition to the school at which the hours were completed. You ask whether the Texas Cosmetology Commission is authorized to adopt a rule requiring the payment of tuition before hours may be transferred for credit.

Although we are of the opinion that the commission is not authorized to adopt such a rule, we are also of the opinion that it is appropriate for a school to provide in its contracts with students that the school will not grant credits for a course or provide a transcript until fees are paid.

The commission was established under article 8451.a, subsection 4(a), V.T.C.S., which authorizes the commission to issue rules consistent with the act. Generally, an agency can adopt only such rules as are authorized by and consistent with its statutory authority. State Board of Insurance v. Deffebach, 631 S.W.2d 794, 799 (Tex. App. - Austin 1982, writ ref'd n.r.e.). See also Attorney General Opinions H-147 (1973); O-4090 (1941); O-536 (1939). The manifest intent behind the commission's enabling act is to regulate the practice and instruction of beauty culture. The commission is required to license shops, operators, schools, and instructors. The commission is also authorized to issue permits to students of beauty culture.

The only provisions in the enabling act that regulate financial matters between beauty culture schools and their students are subsections (c) and (d) of section 21. Those subsections provide for the refund of tuition in cases where a school closes before the courses of instruction have been

completed and where a student becomes physically incapable of finishing the courses. Those provisions indicate a legislative understanding that tuition is paid in advance of instruction and that students might need protection from the schools rather than the reverse situation indicated by your question.

Section 23 of the act authorizes students to transfer credits between schools as follows:

Any student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or vocational cosmetology program in a public school in this state. A transcript showing the number and courses of completed hours certified by the school in which the instruction was given must be submitted to the executive director. On evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student desires a transfer that the stated hours and courses have been successfully completed and that the student is not required to repeat the instructions.

We are required to read all parts of a statute together to interpret statutory language, and we believe that the executive director's "evaluation and approval" required by the above-quoted section is to be read with the "hours and courses" found later in the same sentence and "the minimum curricula of the subjects and hours" established by the commission under section 4(b) of the act. The commission has authority to adopt rules relating to "hours and courses" or "subjects and hours" but not relating to financial matters between the school and the student, other than refunds as indicated by the discussion of section 21 above.

While we find no authorization for the board to adopt a rule requiring a student to settle his account with a school before transferring to another school, neither do we find any prohibition against a school's ensuring payment through its contracts with students or through its own rules. Section 23 requires that a school certify a transcript showing the number and courses of completed hours of instruction prior to the executive director's evaluation and approval. A contract provision or rule requiring settlement of obligations to the school prior to certification would

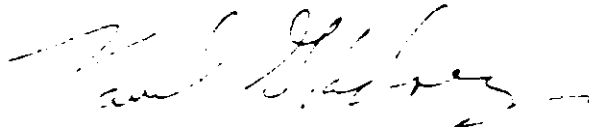
Ms. Delores L. Alspaugh

March 21, 1989

Page 3

avoid the problem outlined in your letter. It would seem to be a sound business practice for a school to ensure that it be paid for the services it renders. In these circumstances, we think it would be appropriate for the commission to adopt a rule stating that it is the view of the commission that schools may include a provision in their contracts that would require settlement of obligations prior to the schools' certification of hours and courses.

Very truly yours,



Karen C. Gladney
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

KG/er

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